

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

September 11, 2013
9:00 a.m.

Members present: Chairman Gilbert, Councilors Butler, Gosse, Henderson, Lyons, O'Brien, Rastallis, Rawnsley and Varotsis

Members absent: Councilor Hinds

Also present were Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

Chairman Gilbert called the meeting to order at 9:00 a.m.

1. Approval of Minutes of the July 10, 2013 Meeting

- ***Motion made by Councilor Varotsis to approve the minutes, second by Councilor Henderson. Motion passed unanimously with Councilors Butler, Gosse, and Rawnsley abstaining.***

2. Status of Appeals

Appeals Clerk, Paula Scott, presented an update on the following appeals:

I. New Appeals

Docket No. 13-05 WC – Colby Brook Park Realty Trust

Re: 6/11/13 Administrative Order No. 13-010 WD

Hearing Officer: Not assigned

Status: July 11, 2013 received Notice of Appeal. 7/12/13 issued receipt of appeal letter.

Council to accept or dismiss appeal at the August 14, 2013 meeting. 8/26/13 received Appearance of Kerry Barnsley for the Department and received Amendment to the Administrative Order being appealed. As the August meeting was cancelled, Council to act on Notice of Appeal at the September 11, 2013 meeting.

- ***Councilor Lyons moved to accept the appeal, second by Councilor Rawnsley. Councilor Gosse made it known he was familiar with the appellant. Motion passed unanimously.***

Docket No. 13-06 WC – Old Dutch Mustard Co., Inc.

Re: 7/19/13 Administrative Order No. 13-012 WD

Hearing Officer: Not assigned

Status: August 19, 2013 received Notice of Appeal. 8/20/13 issued receipt of appeal letter.

Council to accept or dismiss appeal at its September 11, 2013 meeting. If the Council accepts the appeal the appellant requests a Stay for 60 days to allow the appellant and the Department to discuss settlement.

- ***Councilor Gosse moved to accept, second by Councilor Varotsis. Councilor Rawnsley made it known he had done work for Old Dutch Mustard. Motion passed unanimously.***

- ***Councilor Varotsis moved to allow the Stay for 60 days, second by Councilor Gosse. Motion passed unanimously.***

II. Decision and Orders that need to be written finalized and issued.

III. Hearings or PHCs Pending

Docket No. 13-01 WC – Edward and Robin Monty

RE: 12/05/12 Subsurface construction Approval No. 2012111282 issued to Hanna E. Perutz, Trustess

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Recused Member: Deborah Hinds

Status: January 3, 2013 received Notice of Appeal. 1/4/13 issued receipt of appeal letter. 1/28/13 received Motion to Dismiss from permittee. February 7, 2013 received Objection to Motion to Dismiss. Council accepted the appeal on 2/13/13 and appeal acceptance letter issued on 2/14/13. 2/26/13 received letter from permittee. 2/28/13 received appearance from Robert Murphy, Jr. for the permittee. March 13, 2013 received appearance from Richard de Seve for DES. April 10, 2013 issued Order on Motion to Dismiss which was denied. 4/11/13 sent Notice of Pre-hearing Conference schedule for May 13, 2013. 5/8/13 sent Notice of Unexpected Conflict, Hearing Officer unable to attend scheduled PHC via email. 5/9/13 sent Notice of Rescheduled PHC, scheduled for 5/17/13. Pre-Hearing Order(PHO) issued on 5/17/13 continuing the PHC. 6/5/13 received DES' Motion to Stay. Hearing Officer to rule on this. June 13, 2013 received Objection to Motion to Stay and Assented-to Motion to Stay. 6/14/13 issued ruling on Motion to Stay, which was granted, with a status report due by September 15, 2013.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 11-05 WC – Town of Hooksett and Hooksett Sewer Commission

RE: 3/21/11 Administrative Order, Administrative Order No. 11-010 WD

Presiding Officer: Not Assigned

Recused: Christopher Rawnsley

Status: On May 11, 2011 the Council voted unanimously to accept appeal. The Town and DES continue to be engaged in discussion to resolve this matter. Both the Town and DES request that the Council continue to delay taking action on the Notice of Appeal. Sent request for status on June 14, 2012 asking for a response by July 11, 2012. June 22, 2012 received status report from appellant. Currently efforts are under way to implement a solution to the problems experienced that led to the issuance of the Administrative Order. October 17, 2012 sent request for status asking for a response by November 14, 2012. November 14, 2012 received status report. They are continuing to implement a solution to the problems experienced that led to the issuance of the Administrative Order(AO). March 14, 2013 issued request for updated status report. Received a message from Appellant's attorney that the Department was closing this matter. April 16, 2013 the Department issued Notice of Closure for the AO. A message was left by Appeals Clerk for Attorney Peltonen but no response has been received. July 3, 2013 received a letter from Atty. Peltonen stating "no further action on the pending appeal is necessary". 7/10/13 issued confirmation of Withdrawal of Appeal letter.

Dockets No. 12-01 WC – David Sundman, et al.

Re: 12/19/11 Alteration of Terrain Permit No. AoT-0353 for Dalton Valley Drag

Hearing Officer: David Conley assigned on 2/9/12

Status: Received appeal that appears to be timely on January 18, 2012. Issued receipt of appeal letter on January 20, 2012. Council accepted the appeal Feb. 8, 2012, notice was issued Feb. 9, 2012. Mar. 20, 2012 received Motion to Continue PHC. Mar. 26, 2012, Motion was granted. Rescheduled PHC for May 2, 2012 at 9 a.m. At the Council's 4/11/12 meeting, the Council voted to consolidate appeal Docket Nos. 09-05 WC – North Country Alliance for Balanced Change and 12-01 WC David Sundman, et al. Notice of the consolidated appeals and PHC were issued April 12, 2012. PHC was held on 5/2/12, a second PHC is scheduled for Aug. 27, 2012 @ 9 a.m., and a hearing is scheduled for Sept. 12, 2012 @ 10 a.m. Notice given 5/2/12 via PHO. 8/23/12 received Appellant's Partially Assented-To Motion to Continue Hearing and PHC; Appellant North Country ABC's Motion for Partial Summary Judgment; and Appellant North Country's ABC's Memorandum in Support of Motion for Partial Summary Judgment. 8/27/12 received Stipulation to Dismissal of Appeal of Permit WPS-8289A. 8/30/12 Order regarding Dismissal of Appeal by agreement was issued. In accordance with the dismissal, Docket No. 09-05 WC Dalton Valley Drag, LLC is withdrawn from the Council's docket. September 4, 2012 received Status Update from the Department regarding Docket No. 12-01 WC. The license action is under Reconsideration. An updated status request is to be sent to the Appellant and the Department.

Docket No. 12-19 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100196 issued to the Town of Newmarket (PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter. February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/8/13 received Joint Motion to Continue. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

Docket No. 12-20 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100871 issued to the Town of Exeter (PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter. February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/7/13 received Joint Motion to Continue. Council to accept or decline appeal. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

3. New Business

a. Rules Env-Wq 2200 Certified Salt Applicator Program –

Eric Williams and Earl Chase, Watershed Bureau

Draft interim rules were distributed. Permanent rules will be worked on later. Eric Williams gave a background on the rules. These rules concern road salt applications. Liability was the largest concern for private sector applicators. It was found improving efficiency vs. quantity and this was well received. A bill was passed this year for a voluntary certification for salt application that gives them additional protection. A voluntary program called Green Snow Program was developed by UNH. The feedback from the almost 400 who have taken the course has been positive. Best Management Practices were also developed. It was noted the State is making reductions as required by the federal regulations. DOT has written winter

maintenance policy, guidelines, etc. There is a MOA through 2016 between DES & DOT to provide resources.

Questions were taken by Eric & Earl. It was suggested by the Council that a permanent funding source be sought to manage this.

Action needed at the October meeting.

b. Env-Dw 505 Backflow Prevention

Holly Green and Wade Pelham, Drinking Water Groundwater Bureau

A rule summary was distributed. The annual report will have one parameter added. Minor changes and renumbering for re-adoption. Questions from the Council were addressed.

Action needed at the October meeting.

c. Env-Dw 1001 Grants for Surface Water Treatment, Regional Water Systems, and Groundwater Investigations

Holly Green and Dan Dudley, Drinking Water Groundwater Bureau

Re-adoption of existing rules that cover the 3 grant programs. A few changes were noted. Rate survey will now be every 3 years. They are adding a pre-application to the application process to determine eligibility and prioritize applications received. Director Stewart made note there is no funding for new projects in this biennium. There is hope for future funding. Questions from the Council were addressed.

Action needed at the October meeting.

d. Env-Wq 405 Geothermal System Rules

Debra Sonderegger & Mitch Locker, Drinking Water Groundwater Bureau

Mitch reviewed the background that these rules address. These are for new construction. Known systems in the state are around 1500. Questions from the Council were addressed.

Action needed at the October meeting.

4. Old Business

a. Env-Dw 902 Rules for Protecting the Purity of Regulated Waters

Holly Green and Paul Susca, Drinking Water Groundwater Bureau

Re-adoption of rules to protect surface water sources used by water systems. There is a separate set of restrictions for each water system tailored to each need. These are enforced by the water systems themselves. They were last readopted in 2005. Source water goal is to have water maintained at greatest purity possible.

Changes are being made to the Bradley Lake section – no objections received.

Changes to Lake Massabesic restrictions – prohibit horse back riding in water, tributaries and land within 200 feet plus they must scoop the poop within the area owned by the watershed.

Chairman Gilbert noted there is a public hearing process to hear public comment. Several requests were received to present to the Council. In the interest of transparency the requests were allowed.

Debbie Briscoe spoke for the equestrians. She distributed additional information. They appreciate the use of the Manchester property. They would like to remove language regarding the rule for picking up of the horse manure.

Jon O'Neil, Watershed Forester from Manchester Water Works, handles enforcement of the rules and helps sets policy. Passive recreational use is allowed around Lake Massabesic. It is a shallow lake and human activity is not tolerated in the water. They are not wanting to totally prohibit horse back riding. Tower Hill is the main reservoir that feeds into the lake. 3 Public meetings were held in 2010 with the equestrians. DES is interested in protecting the water system. Rules need to be filed before end of November before they expire.

Discussion and action to be taken at the October meeting.

5. Other Business

6. Next Meeting

October 9, 2013 at 9:00 a.m.

7. Adjournment

- ***Councilor Varotsis made a motion to adjourn, second by Councilor Henderson. Motion passed unanimously.***

Meeting was adjourned at 10:42 a.m.